IN THE

# SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1971

NO. 71-1319

In re PETER S. SARELAS,

AN ATTORNEY,

*Respondent.*

## BRIEF IN OPPOSITION TO THE PETITION FOR WRIT OF CERTIORARI

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Heretofore appearing as amicus curiae in the Supreme Court of Illinois for the Board of Managers and the Committee on Grievances of the Chicago Bar Association, Sitting as Commissioners of the Supreme Court of Illinois under Illinois Revised Statutes, CH. 110A, § 751 (1967).

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### OPINION OF THE COURT BELOW

The Opinion of the Supreme Court of Illinois is published in the Official Reporter as *In re Peter S. Sarelas,* 50 Ill. 2d 87, 277 NE 2d 313. It also appears in the Appendix to Petitioner's Brief.

### QUESTION PRESENTED

Is Illinois Supreme Court Rule 751 relating to disciplinary proceedings against attorneys at law an improper delegation of judicial powers?

### CONSTITUTIONAL PROVISIONS INVOLVED

It is respectfully submitted that neither a Constitutional provision nor substantial Federal question is presented.

## STATEMENT OF THE CASE

This matter was previously brought to the attention of this Honorable Court by virtue of another Petition for Certiorari filed by this Petitioner to the October, 1970, term of this Court, under No. 1126, 401 U.S. 963. At that time Petitioner unsuccessfully sought this Court's review of an Order of the Illinois Supreme Court denying Petitioner leave to file an original Writ of Prohibition. That Petition and the instant Petition both relate to a disciplinary proceeding instituted against Petitioner, an attorney licensed to practice before the bar of the State of Illinois, before the Grievance Committee of The Chicago Bar Association, sitting as Commissioners of the Supreme Court of Illinois pursuant to Illinois Supreme Court Rule 751 (Appendix A).

At the conclusion of the proceedings before the Grievance Committee, sitting as Commissioners, the Commissioners found that the Respondent (Petitioner) had been guilty of conduct tending to bring the bench and bar into disrepute and a recommendation was made that Respondent be disbarred. Upon review of the proceedings before the Board of Managers of The Chicago Bar Association, also sitting as Commissioners of the Supreme Court of Illinois, the Commissioners' findings and recommendation of discipline were approved, and the Report of Proceedings, together with Respondent's exceptions thereto, were forwarded to the Illinois Supreme Court for its consideration.

The Illinois Supreme Court, after review of the complete record, approved the Report of the Commissioners in all respects except as to the measure of discipline recommended which was altered from disbarment to suspension from the practice of law for a period of two years and until further Order of the Court (See Opinion of Court below).

## ARGUMENT

With all due respect, we suggest that the Petition is most verbose and contains many lengthy discussions of irrelevant matters, all of which makes it quite difficult to join issue. However, it would appear that the essence of the Petition is that Rule 751 of the Rules of the Supreme Court of Illinois is an unconstitutional delegation of judicial power. This is not the first time such an argument has been made, either in the Supreme Court of Illinois or in this Court. In the case of *In re Rieger*, 402 Ill. 483, 484, the Supreme Court of Illinois said:

> "We have on several occasions held that the constitutionality or power of the Chicago Bar Association to act as Commissioners of this Court in disbarment proceedings is not subject to question. (*In re Donaghy*, 393 Ill. 621; *In re Roth*, 398 Ill. 131; *In re McCallum*, 391 Ill. 400). In the last-mentioned case the respondent attempted a review of this point in the Supreme Court of the United States, but the appeal was dismissed. We therefore deem it unnecessary to discuss this claim further."

This Court's ruling in *McCallum* appears in 326 U.S. 689.

A similar contention was made in the United States Court of Appeals for the Seventh Circuit in the case of *Phipps* v. *Wilson*, 186 F.2d 748. On page 752 of the Opinion the Court of Appeals said, citing *McCallum*,

> "A similar objection was made and overruled *In re McCallum*, 391 Ill. 400, 64 NE 2d 310, a disbarment proceeding. The court there pointed out that since 1933 committees of the Chicago Bar Association have acted as commissioners of the Illinois Supreme Court in disciplinary proceedings brought against attorneys at law in Chicago. See: Rule 59, Supreme Court Rules of Practice and Procedure, Ch. 110, Smith-Hurd Illinois Anno. Stat. § 259.59. The court emphasized that such commissioners are merely the court's agents for the

> purpose of gathering and reporting the evidence and that their recommendations are purely advisory. The court said, 391 Ill. at page 418, 64 NE 2d at page 317: 'The recommendations made are purely advisory and this court acts only after an examination of the evidence in the case, except where no answer is made by respondent, and in these cases the charges and supporting evidence are examined before action is taken by this court.'"

We respectfully direct the Court's attention to the fact that petitioner's first Petition for Certiorari in this matter, docketed to the October, 1970, term of the Court under No. 1126 (alluded to above), is essentially the same in content as the present Petition. There is some rearrangement in the order of the argument but whole sections are lifted verbatim from the previous Petition. We submit that the great bulk of the material in both Petitions is quite irrelevant to any matter in controversy.

Petitioner asserts some procedural defects in the hearings before the Commissioners but it would seem that any detailed discussion of such contentions would unduly lengthen this brief. These various contentions were raised before the Supreme Court of Illinois and were duly considered and—properly we submit—overruled. The flavor of the entire proceedings is well capsulized in this comment made by the Supreme Court of Illinois in the course of its opinion:

> "We have reviewed the complete report of proceedings. It is a tribute to the patience and tolerance of those conducting the proceeding that they were able to maintain any semblance of an orderly procedure. Amazingly, the briefs filed by the respondent in this court are devoted primarily to the same type of abusive, repetitive accusations which give rise to this proceeding. Much of his brief is nothing more than charges, repeated time and again against other members of the bar, the judiciary and the Chicago Bar Association." (Appendix 12, Petitioner's Brief.)

## CONCLUSION

It is respectfully submitted that no substantial Federal question is presented and the Petition for Certiorari should accordingly be denied.

Respectfully submitted,

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Heretofore appearing as amicus curiae in the Supreme Court of Illinois for the Board of Managers and the Committee on Grievances of the Chicago Bar Association, Sitting as Commissioners of the Supreme Court of Illinois under Illinois Revised Statutes, CH. 110A, § 751 (1967).

## APPENDIX A.

### Illinois Revised Statutes, c. 110A § 751 (1967).

(a) The Board of Governors and its existing Committee on Grievances, and their successors as such, of the Illinois State Bar Association, and the Board of Managers and its existing Committee on Grievances, and their successors as such, of the Chicago Bar Association, are hereby appointed as Commissioners of the Supreme Court and are empowered and charged to make investigations from time to time, as may be necessary, concerning practices of attorneys at law which tend to defeat the administration of justice or to bring the courts and the legal profession into disrepute. To this end, these commissioners are further empowered and charged to receive, entertain, inquire into, and take proof concerning complaints against attorneys at law of this state, and may call to their assistance in such inquiries other members of the bar or bar associations of the state, may make all necessary rules and regulations concerning the conduct of such inquiries, and may themselves, or by such committees as they may designate, take the evidence of witnesses, as hereinafter provided.

(b) No complaint against an attorney at law shall be entertained unless it is signed by the person or persons aggrieved or by the president and secretary of a regularly organized bar association or by the chairman of a regularly appointed committee of the Chicago or Illinois State Bar Associations and unless it is sufficiently clear and specific in its charges as reasonably to inform said attorney at law of the acts of misconduct he is claimed to have committed.

(c) When a member of the bar, designated by the Board of Governors of the Illinois State Bar Association or the Board of Managers of the Chicago Bar Association so to do, shall file in the office of the clerk of the Supreme Court an affidavit showing that any respondent resides or has gone

out of this state or on due inquiry cannot be found, or is concealed within this state, so that process cannot be served upon him, and stating the place of residence of such respondent, if known, or that upon diligent inquiry his place of residence cannot be ascertained, and stating his last known place of residence, the clerk of the Supreme Court shall cause publication to be made in some newspaper of general circulation published in the county of respondent's place of residence or last known place of residence in this state, as set forth in such affidavit, containing notice of the pendency of the proceeding, the names of the complainant and the respondent, the title of this Court and that of the commissioners of the Court (the members of the Board of Governors and Committee on Grievances of the Illinois State Bar Association or of the Board of Managers and the Committee on Grievances of the Chicago Bar Association, as the case may be) and the time and place of the hearing of the case. He shall also within ten days from the first publication of such notice send a copy thereof by mail, addressed to such respondent whose residence or last known place of residence is stated in such affidavit. The certificate of the clerk that he has sent such copy in pursuance of this provision shall be evidence. Such notice shall be published for three consecutive weeks, the first insertion of which shall be at least thirty days before the date upon which the said cause shall be set for hearing by the commissioners; and unless said time has intervened no proceeding therein shall be had, but the said cause shall stand continued to a date at least thirty days after the said first date set for hearing, provided, that in case the respondent appears and consents to the hearing the cause may be heard at an earlier time.

(d) Upon application by such commissioners, or committees, the clerk of the Supreme Court shall issue writs of

subpoena ad testificandum, writs of subpoena duces tecum, or dedimus potestatem to take dispositions. The commissioners and their committees are empowered to take and transcribe the evidence of witnesses, who shall be sworn by a commissioner or any person authorized by law to administer oaths, and the commissioners shall report to the Supreme Court the failure or refusal of any person to attend and testify in response to any subpoena. The hearings before the commissioners or committees shall be private unless the respondent shall request that they be public.

(e) At the conclusion of a hearing upon any complaint against any attorney before such commissioners or committees, the Board of Governors or Board of Managers, as the case may be, shall, if action by the Supreme Court of any kind is recommended, make report to the Supreme Court of its conclusions of fact and law concerning the complaint, answer, and proof; and thereupon such matters shall stand for hearing and disposition in this Court. Such report shall be entered on the docket and entitled in the name of the respondent. Upon the filing of any such report with proof of service of a copy thereof on the respondent in the same manner as briefs are required by rule of the Supreme Court to be served, the respondent therein shall have ten days from the date of such filing to file exceptions thereto, and shall, within twenty days after the filing of such exceptions, bring to the Supreme Court the record and proofs, or such parts thereof as may be necessary to enable the Court to pass upon such exceptions. The commissioners, upon request of the respondent and payment of the actual cost thereof, shall certify to the Court the proofs and record, or such parts thereof as the respondent may designate. With such record the respondent shall file a printed brief and designation of excerpt from record or an abstract as provided in rules 341, 342, and 344.

(f) Upon the filing of exceptions to such report by the respondent, the Board of Governors or the Board of Managers, as the case may be, shall designate a member of the bar to file such certificates of proof, additional designation of excerpts or additional abstract, and brief as may be deemed necessary fully to advise the Court. Such additional designation or additional abstract, if any, and brief shall be filed within twenty days after the filing of the respondent's designation or abstract and brief, and respondent may file a reply brief and excerpts from record in 10 days. The number of excerpts or abstracts and briefs and the manner of their duplication and service shall be governed by rule 344.